Frequently Asked Questions

I. ABOUT HSBC AMANAH

What is HSBC Amanah?
HSBC Amanah is the global Islamic banking division of the HSBC Group, responsible for the development of Islamic banking products for distribution to customers of the HSBC Group. It was established in 1998 and has regional offices in the UK, the US, Saudi Arabia, the UAE, Malaysia, Indonesia, Bangladesh, Singapore and Brunei.

How can a conventional bank, which is primarily interest-based, offer Islamic banking services?
Islamic law does not require that the seller of a product be Muslim, or that its other services also be Islamic. This is the considered opinion of our Shariah Supervisory Committee.

Conventional banks charge and pay interest, and HSBC is a conventional bank. But HSBC is also a customer-driven institution, and the reason it provides Islamic products is to serve a genuine financial need among Muslims. Of course, our Islamic products are available for Muslims and non-Muslims alike.

How can HSBC Amanah and its products be considered Islamic?
The Shariah does not restrict commercial or financial transaction providers to be Muslims. It does require, however, that the particular product or transaction be in compliance with Shariah guidelines and promote halal activities. This is the considered opinion of our Shariah Supervisory Committee.

All our products are approved and certified by this Committee, which comprises four of the most eminent scholars in the field of Islamic banking:

- Justice (Retd.) Muhammad Taqi Usmani, Pakistan
- Sheikh Nizam Yaquby, Bahrain
- Dr. Mohammed Ali Elgari, Saudi Arabia
- Dr. Muhammad Imran Ashraf Usmani, Pakistan

Why is there a need for a separate brand for HSBC Amanah (as opposed to HSBC)?
There are over 1.5 billion Muslims in the world today, and almost a quarter of them live in countries having Muslim majorities in which HSBC operates. These people are looking increasingly for financial products which are in harmony with their religious beliefs. HSBC understands the needs of our local communities, and the HSBC Amanah brand responds to the desire of our Muslim customers for our Shariah compliant services to be fully differentiated from our conventional financial services.

Who are your Shariah Board members and what is their role?
The HSBC Amanah Shariah Supervisory Committee currently comprises four of the most eminent scholars in the field of Islamic banking: Justice (Retd.) Muhammad Taqi Usmani from Pakistan, Shaykh Nizam Yaquby from Bahrain, Dr. Mohamed Ali

Elgari from Saudi Arabia and Dr Muhammad Imran Ashraf Usmani from Pakistan. The role of these scholars is to review the operations of HSBC Amanah (the global Islamic banking division of HSBC Group), supervise its development of Islamic products, and determine the Shariah compliance of these products.

In which countries does HSBC Amanah offer Islamic banking products?
The countries within the HSBC Group that offer HSBC Amanah products and services include Saudi Arabia, UAE, Malaysia, USA, UK, Indonesia, Bangladesh, Brunei and Singapore.

What is the advantage of HSBC Amanah over products offered by other Islamic financial providers?
At HSBC, we constantly strive to provide financial solutions that meet the requirements of our customers around the world. HSBC Amanah offers Islamic banking solutions which combine our financial expertise with your enduring values. Now customers can experience the global coverage and convenience of banking with HSBC without compromising the principles of the Shariah (Islamic law).

Are these products approved by Shariah scholars/Sheikhs/Muftis?
All the HSBC Amanah products and services are developed in consultation with and approved by the Islamic scholars on HSBC Amanah's Shariah Committee. This process of product development, fund segregation and Shariah review ensures that HSBC Amanah’s Islamic products are free of interest and within the guidelines for commerce, finance and investment that are prescribed by the Shariah.

Is the capital for the establishment of this Islamic banking business from Shariah compliant sources?
The HSBC Amanah Shariah Supervisory Committee has approved the utilisation of conventional capital for the purposes of Shariah compliant financing while restricting the usage of funds in generating Islamic assets only. It is perfectly reasonable to trade or have financial dealings in accordance with Shariah guidelines with people of different religions and in a manner that does not promote activities that are haram. In our case HSBC's capital is helping to promote the concept of Islamic banking and helping Muslims around the world to meet their financial needs according to their principles.

It is the considered opinion of the HSBC Amanah Shariah Supervisory Committee that the operations of HSBC Amanah products are Shariah compliant on an ongoing basis.

II. ABOUT ISLAMIC BANKING

A. Purpose

What is the purpose of Islamic financial providers?
The International Association of Islamic Banks (IAIB) in its statement in 1990 on the purposes of Islamic banks said:

"The Islamic banking system involves a social implication, which is necessarily connected with the Islamic order itself, and represents a special characteristic that distinguishes Islamic banks from other banks based on other philosophies. In exercising all its banking or developmental activities, the Islamic bank takes into prime consideration the social implications that may be brought about by any decision or action taken by the bank. Profitability--despite its importance and priority--is not therefore the sole criterion or the prime element in evaluating the performance of Islamic banks, since they have to match both between the material and the social objectives that would serve the interests of the community as a whole and help achieve their role in the sphere of social mutual guarantee. Social goals are understood to form an inseparable element of the Islamic banking system that cannot be dispensed with or neglected.[1]

Professor Jean-François Seznec comments that "At a time when global economics forces are causing great hardship for people around the world, and the harsh demands of the market seem to supersede concern for the well-being of fellow humans, Islamic banking may serve as a means of re-imbuing modern banking with ethical norms. Within the broader financial system, Islamic finance can play a role in reestablishing a sense of ethics that has been lost and to try to make its concept and products acceptable to ethically minded Muslims, Christians, Jews and others who are engaged in financial transactions."[2]

What are the goals and objectives of an Islamic economy towards which the Islamic banking system contributes?

Muslim economists have suggested the following objectives for an Islamic economy:

1. Broad-based economic well-being with full employment and optimum rate of economic growth
2. Socio-economic justice and equitable distribution of income and wealth;
3. Stability in the value of money to enable the medium of exchange to be a reliable unit of account, a just standard of deferred payments, and a stable store of value.
4. Mobilisation and investment of savings for economic development in an equitable manner such that a just return is ensured to all parties concerned;

[1] International Association of Islamic Banks, 1990
[2] (Jean-François Seznec, ETHICS, ISLAMIC BANKING AND THE GLOBAL FINANCIAL MARKET, 23 SPG-FLFWA 161 (Winter-Spring 1999)).

5. Effective rendering of all services normally expected from the banking system.[3]

What constitutes Riba?

Simply, riba is interest. "Any amount, big or small, over the principal, in a contract of loan or debt is "riba" prohibited by the Quran, regardless of whether the loan is taken for the purpose of consumption or for some production activity."[4]

Riba has been classified into Riba al-Nasee'ah and Riba al-Fadl.

The type of riba associated with interest is Riba al-Nasee'ah, also known as Riba al-Quran or Riba al-Jahiliyyah. It is collected in compensation for deferring a due debt to a new term of deferment. This definition applies regardless of the source of the due debt: whether it resulted from a loan, or a deferred price in a sale[5]. The prohibition of this form of riba is primarily based on the following verse of the Quran:

"You who believe, heed Allah and write off anything that remains outstanding from lending at interest if you are [true] believers. If you do not do so, then be prepared to face war declared by Allah and His messenger! If you repent, you may retain your principal. Do not wrong [others] and you will not be wronged. (Al-Quran 2:278-279)"

For those who are interested, there is also another type of riba called Riba al-Fadl, or Riba al-Buyu'. It pertains to six goods (gold, silver, wheat, barley, salt, and dates). This was forbidden to prevent potential circumvention of riba al-nasee'ah, which can be effected by selling gold with a deferred price, which the debtor later pays with increase containing riba disguised through a payment in silver[6]. The Shariah scholars are unanimous over the prohibition of this type of riba and its characterization, based on the Hadith narrated by Al-Bukhari and Muslim on the authority of Abu Said Al-Khudri:

"Do not trade gold for gold except in equal amounts, with no increase of one over the other; and do not trade silver for silver except in equal amount, with no increase of one over the others."[7]

Why has Riba been prohibited by Islam?

"And if you repent (from charging interest) then you are entitled to your principal. Neither wrong nor be wronged." (Al-Quran - 2:279)

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[3] M. Umer Chapra, TOWARDS A JUST MONETARY SYSTEM, (1985: The Islamic Foundation) p.34.

[4] Judgment of the Shariat Appellate Bench of the Supreme Court of Pakistan, December 23rd, 1999, Shariah Appeal No. 1/92, etc). More or less similar views have bee expressed by the Islamic Fiqh Academy during its Second Meeting, December 22-28, 1985. The decision was based, amongst other evidence, on the following: "O those who believe fear Allah and give up whatever remains of Riba, if you are believers" (2:278) [Al-Quran]. Every loan that derives a benefit (to the creditor) is Riba (Al-Syuti, Al-Jame' al-Saghir, V.2, P.94) [Hadith]

[5] Dr. Wahbah Al Zuhayli, FINANCIAL TRANSACTIONS IN ISLAMIC JURISPRUDENCE, (Dar al-Fikr: Damascus), Volume 1, Pg. 311 (Tr. Mahmoud A. El-Gamal)

[6] Dr. Wahbah Al Zuhayli, FINANCIAL TRANSACTIONS IN ISLAMIC JURISPRUDENCE, (Dar al-Fikr: Damascus), Volume 1, Pg. 311 (Tr. Mahmoud A. El-Gamal)

[7] Dr. Wahbah Al Zuhayli, FINANCIAL TRANSACTIONS IN ISLAMIC JURISPRUDENCE, (Dar al-Fikr: Damascus), Volume 1, Pg. 314 (Tr. Mahmoud A. El-Gamal)

As is evident from the verse quoted above, the rationale behind the prohibition of interest in Islam suggests an economic system where all forms of exploitation ("neither wrong or be wronged") are eliminated. In particular, Islam wishes to establish justice between the financier and the entrepreneur: the financier should not be assured of a positive return without doing any work or sharing in the risk, while the entrepreneur, in spite of his management and hard work, is not assured of such a positive return.

While Islamic socioeconomic goals are beyond the mandate of HSBC Amanah or the HSBC Amanah Supervisory Committee, they provide the context within which the Islamic prohibition of riba is properly understood.

B. Shariah Supervision

Is it true that there are only a handful of Shariah scholars in Islamic banking?

While it is true that growth in Islamic banking warrants a greater number of scholars, there are already a fair number of highly qualified scholars in the field. Over fifteen scholars sit on the Shariah Board of Accounting and Auditing Organization of Islamic Financial Institutions. There are about sixty scholars on the expert list of Islamic Fiqh Academy, a number of whom are proficient in fiqhi issues pertaining to Islamic banking. There are many other scholars who sit on the Advisory/Supervisory boards of a number of banks. As in any field of knowledge, some of these scholars are more known than others based on their experience and knowledge.

Islamic financial providers remunerate Shariah scholars for their services. Isn't there a conflict of interest here?

Just like external auditors are required to ensure that the activities of a certain institution are in line with regulations, Shariah scholars are mandated to ensure that financial activities of the institution they supervise are in accordance with the Shariah. Their decisions are also watched very closely by the market and hence their peers. This adds a further layer of comfort that the decisions of Shariah scholars are independent of the pressures of the institution they work for.

How does HSBC Amanah ensure that the Shariah scholars maintain objectivity, and safeguard all sensitive information, despite being present on the Shariah boards of competing institutions concurrently?

Shariah scholars sit on the boards of various institutions. However, just as one person can be a non-executive director at a number of companies and still maintain confidentiality so can the Shariah scholars sit on various boards and still safeguard sensitive information.

Is there any independent central body that regulates Shariah scholars globally, in order to maintain some degree of consistency within the Islamic banking industry?

There are global bodies of Shariah scholars that work towards promoting consistency and standardization. The Shariah Board of the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) is one example. The OIC (Organisation of Islamic Conference) Islamic Fiqh Academy is another. The Shariah Board of AAOIFI has issued Shariah Standards that are widely followed within the Islamic banking industry. However, the scholars are not regulated by a central authority and it is expected that the general acceptance of Shariah standards will create a market precedent and consistency.

Why do the Shariah Standards vary between Malaysia and the Middle East?
The entire gambit of the Shariah is not a codified legal system. While there are issues on which all the Shariah scholars would agree, they may disagree on certain other issues. Their disagreement is based on the interpretation of evidence available from the Quran and Sunnah (Prophetic example). The difference in the Shariah standards between Malaysia and the Middle East is a reflection of that reality.

C. Financial Instruments

What is Ijara?

Letting on lease. Sale of a definite usufruct of any asset in exchange of definite reward. It refers to a contract of land or other asset leased at a fixed rent payable in cash and also to a mode of financing adopted by Islamic banks. It is an arrangement under which the Islamic banks lease equipments, buildings or other facilities to a client, against an agreed rental. The lessee generally also has an option to purchase the leased asset.

The OIC Islamic Fiqh Academy has recognized ijara as a Shariah compliant mode of Islamic banking.[8]

What is Salam?

Salam means a contract in which advance payment is made for goods to be delivered later on. The seller undertakes to supply some specific goods to the buyer at a future date in exchange of an advance price fully paid at the time of contract. According to normal rules of the Shariah, no sale can be effected unless the goods are in existence at the time of the bargain, but salam sale forms an exception to that rule.

The OIC Islamic Fiqh Academy has recognized salam as a Shariah compliant mode of Islamic banking.[9]

What is Istisna'?

It is a contractual agreement for manufacturing goods and commodities, allowing cash payment in advance and future delivery or a future payment and future delivery. A manufacturer or builder agrees to produce or build a well-described good or building at a given price on a given date in the future. Price can be paid in installments, step by step or as agreed between the parties. Istisna' can be used for providing the facility of

[8] Resolution passed at the Fifth Meeting of the Islamic Fiqh Academy, 10-15 December, 1988
[9] Resolution passed at the Ninth Meeting of the Islamic Fiqh Academy, April 1-6, 1995

financing the manufacture or construction of houses, plants, projects, and building of bridges, roads and highways.

The OIC Islamic Fiqh Academy has recognized istisna' as a Shariah compliant mode of Islamic banking.[10]

What is Mudaraba?
A form of partnership where one party provides the funds while the other provides expertise and management. The latter is referred to as the mudarib. Any profits accrued are shared between the two parties on a pre-agreed basis, while loss is borne by the provider(s) of the capital.

What is Murabaha?
Literally it means a sale on mutually agreed profit. Technically, it is a contract of sale in which the seller declares his cost and the profit. Islamic banks have adopted this as a mode of financing. As a financing technique, it can involve a request by the client to the bank to purchase a certain item for him. The bank does that for a definite profit over the cost, which is stipulated in advance.

The OIC Islamic Fiqh Academy has recognized murabaha as a Shariah compliant mode of Islamic banking.[11]

What is Musharaka?
Musharaka means a relationship established under a contract by the mutual consent of the parties for sharing of profits and losses in the joint business. It is an agreement under which the Islamic bank provides funds, which are mixed with the funds of the business enterprise and others. All providers of capital are entitled to participate in management, but not necessarily required to do so. The profit is distributed among the partners in pre-agreed ratios, while the loss is borne by every partner strictly in proportion to respective capital contributions.

What is Wakala?
A contract of agency in which one person appoints someone else to perform a certain task on his behalf, usually against a certain fee.

What is commodity murabaha?
Commodity murabaha, as it is generally known, is sale of certain specified commodities, through a metal exchange, on a cost plus profit basis. If the customer wishes to invest money with the Bank it will purchase commodities at Cost X from Broker A and sell them to the Bank at Cost X plus Profit Y = Contract Price. The Bank will repay the Contract Price over a period of time.

What is tawarruq?
Tawarruq is the reverse form of commodity murabaha, where the bank sells commodities to the customer on deferred payment at cost plus profit. The customer then sells the commodities to a third party on spot basis and gets instant cash.

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[10] Resolution passed at the Seventh Meeting of the Islamic Fiqh Academy, May 9-14, 1992
[11] (Resolution passed at the Fifth Meeting of the Islamic Fiqh Academy, December 10-15, 1988)

What is ijara wa iqtina?
It is a mode of financing adopted by Islamic banks. It is a contract under which the Islamic bank finances equipment, building or other facilities for the client against an agreed rental together with a unilateral undertaking by the bank or the client that at the end of the lease period, the ownership in the asset would be transferred to the lessee. The undertaking or the promise does not become an integral part of the lease contract to make it conditional. The rental as well as the purchase price are fixed in such a manner that the bank gets back its cost price alongwith with some profit, which is usually determined in advance.[12]

What is diminishing musharaka?
In diminishing musharakah, a financier and his client participate either in the joint ownership of a property or equipment, or any fixed asset. The share of the financier is further divided into a number of units and it is understood that the client will purchase the units of the share of the financier one by one periodically, thus increasing his own share till all the units of the financier are purchased by him so as to make him sole owner of the property.[13]

What is an arbun contract?
Arbun is down payment. It is a nonrefundable deposit that a buyer makes to retain the right of confirming or canceling the sale.

D. Islamic Transactions

Is it permissible to use LIBOR (London Inter-Bank Offer Rate) as a benchmark?
It is the view of our Shariah Supervisory Committee that Islamic law permits using the conventional market as a benchmark.

Let's take the example of home finance based on Ijara. According to the Shariah, the rent in an Ijara transaction can be set at any value agreed between the buyer and seller. There is no particular reason why a house financed by this method should be any more or less expensive than a house financed by a conventional mortgage. If not ideal, it is certainly halal (permissible) to use the prevailing interest rate as a benchmark for this rate. The criterion for acceptability by the Shariah is that the transaction is compliant with the Shariah, regardless of the price of the goods or how that price is determined.

Consider the example of a Muslim butcher in a non-Muslim country such as China. If he wishes to sell meat that has been slaughtered and prepared according to the Shariah, there is no reason for him not to benchmark his prices to that of conventional Chinese butchers selling the same meat that is not halal. After all, he is providing the same function as a conventional butcher, and seeks similar revenues and profits. Now

[12] Adapted from the website of the Central Bank of Pakistan
[13] Adapted from M. Taqi Usmani's AN INTRODUCTION TO ISLAMIC FINANCE, (2004: Maktaba Ma'ariful Qur'an: Karachi), p.82

you may wish that he priced his goods independently of haram (prohibited) meat, but you cannot conclude that the meat he sells is no longer halal.[14]

Is it permissible to charge a fee for any late or partial payments? If so, is this acceptable under the Shariah?

We may charge an administration fee for any late or partial payments but this cannot be charged to cover opportunity cost. According to our Shariah Supervisory Committee, such a fee can be charged in order to encourage financial responsibility and to recover administrative expenses. This charge is not interest, and does not reflect the interest rate. If the fee paid is more than our actual expenses incurred, we will donate the excess to a public charity of our choice under guidance from our Shariah Supervisory Committee.

How is Ijara financing different from conventional lending? Isn't it simply re-labelling interest as profit?

Ijara can be defined as a contract "to transfer the usufruct of a particular property to another person in exchange for a rent claimed from him."[15] In other words, the term Ijarah is comparable to a conventional leasing mode of financing. You pay rent for the use of the property, instead of paying interest on the loan amount. We purchase the property either from the Seller, or you in the case of refinance, and then lease it to you over an agreed term.

The distinguishing feature of this mode is that the assets remain the property of HSBC. Over the term of the finance, we become landlord and you assume the role of tenant. During this period you make monthly payments which consist of a contribution towards the purchase price of the property (capital) and rental payments. When you have made enough 'capital' contributions to match the original purchase price, we transfer the property to you.

The Shariah allows earning profit through renting out of fixed assets provided that the lessor bears all the ownership related risks attributable tot hose assets.

Islam prohibits Bai' al-Inah, which is "If a person sells an article on credit and then buys it back for a lesser price on cash." Why then is a spot sale and lease back allowed?

The following transaction is prohibited under the Shariah: Sale by A to B for 100 on spot and then repurchase for 110 on deferred payment as this opens the door for interest. However the case of sale and lease back with eventual sale back to the original seller with certain conditions is different as sale and repurchase by original seller has a contract of lease in between, which nullifies the prohibition of '*inah*.

What is the status of a unilateral promise in Islamic banking contracts?

The Muslim jurists have allowed unilateral promises to be enforceable based on the principle that "the promise can be made enforceable at a time of need". The unilateral promise that is given in a particular structure is independent of the underlying transaction and is not a condition for the enforcement of that particular structure.

[14] Adapted from M. Taqi Usmani's AN INTRODUCTION TO ISLAMIC FINANCE, (2004: Maktaba Ma'ariful Qur'an: Karachi), p.119

[15] M Taqi Usmani's AN INTRODUCTION TO ISLAMIC FINANCE, (2004: Maktaba Ma'ariful Qur'an: Karachi), p.158

Hence, if the sale is without any condition, but one of the two parties has promised to do something separately, then the sale cannot be held to be contingent or conditional upon fulfilling of the promise. A sale will take effect irrespective of whether or not the promisor fulfills his promise.

This makes it clear that a separate and independent promise to purchase does not render the original contract conditional or contingent. Therefore, it can be enforced.[16]

[16] Adapted from M Taqi Usmani's AN INTRODUCTION TO ISLAMIC FINANCE, (2004: Maktaba Ma'ariful Qur'an: Karachi), p.88-89.